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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
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Closed Captioning and Video Description)
of Video Programming)
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)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

MM Docket No. 95-176

To the Commission:

COMMENTS OF
PAXSON COMMUNICATIONS CORPORATION

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SUMMARY OF ARGUMENT

Paxson urges the Commission to recognize that television stations should not bear the full responsibility for ensuring all programming contains closed captioning. This obligation would severely burden the operations of television stations, especially independent television stations which have limited financial and technical resources. On the other hand, video programming producers/suppliers have the time, resources, and familiarity with the programming to perform this service efficiently and effectively.

Paxson supports a ten-year transition schedule should the Commission decide to impose closed captioning requirements on television stations. A longer period lessens the impact closed captioning will have on the development of DTV and will allow broadcasters to install closed captioning equipment that is compatible with DTV operations. A ten-year transition period would minimize the financial impact on broadcasters because they will have a longer period in which they can amortize the costs of a closed captioning operation and it will allow time for the closed captioning market to mature and establish reasonable rates for these services.

Infomercials and home shopping programming should be exempt from closed captioning requirements. For both of these types of programming, closed captioning would be unnecessary and will interfere with the information that is already displayed graphically for viewers.

All foreign language programming also should be exempt from closed captioning requirements. Much of this programming stems from local community groups that operate on limited budgets but deliver important programming which serves the local public interest. Closed captioning will increase production costs such that these producers/suppliers will either scale back or eliminate their productions. Local television stations should not be required to

caption these programs because of the complexities and costs of implementing foreign language closed captioning.

For all of these types of programming, the benefits of providing closed captioning are minimal when compared to the economic burdens of and difficulties involved in closed captioning such programming.

TABLE OF CONTENTS

INTRODUCTION	1
I. THE COMMISSION SHOULD NOT PLACE CLOSED CAPTIONING RESPONSIBILITIES ON TELEVISION STATIONS.	3
II. THE COMMISSION SHOULD ADOPT A TEN-YEAR TRANSITION SCHEDULE.	5
III. INFOMERCIALS AND HOME SHOPPING PROGRAMMING SHOULD BE EXEMPT FROM CLOSED CAPTIONING REQUIREMENTS.	7
IV. ALL FOREIGN LANGUAGE PROGRAMMING SHOULD BE EXEMPT FROM CLOSED CAPTIONING REQUIREMENTS.	9
CONCLUSION	10

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To the Commission:

**COMMENTS OF
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Paxson Communications Corporation ["PCC"], by its attorneys, submits herewith its Comments in response to the Commission's Notice of Proposed Rulemaking ["Notice"] in the above-captioned proceeding.¹

Introduction

PCC is a diversified broadcasting company whose principal businesses consist of a nationwide network of television stations known as the Infomall TV Network or *inTV* dedicated to the airing of long-form paid programming, consisting mainly of infomercials, and a major radio station group operating primarily in Florida. PCC owns approximately nineteen television stations nationwide that air *inTV* programming. Approximately sixteen independently-owned television stations carry *inTV* programming.

¹ Closed Captioning and Video Description of Video Programming, Notice of Proposed Rulemaking, MM Docket No. 95-176, FCC 97-4 (January 17, 1997) ["Notice"].

Section 305 of the Telecommunications Act of 1996 added a new Section 713, Video Programming Accessibility, to the Communications Act of 1934.² In enacting Section 713, Congress generally required that video programming contain closed captioning to ensure access to persons with hearing disabilities.³ Section 713 directs the Commission to prescribe rules and implementation schedules for the captioning of video programming. Accordingly, the Commission adopted a Notice of Inquiry which sought comment on a variety of issues related to closed captioning.⁴ The Commission used comments filed in response to the Notice of Inquiry as the basis for its proposals in the Notice.⁵

PCC fully supports efforts to ensure that persons with hearing disabilities have access to video programming through closed captioning technology. Such efforts, however, should not leave common sense behind. The Commission must recognize that programming providers such as broadcast television stations are not in the best position to ensure programming contains closed captioning. Rather, the responsibility for closed captioning must reside with program producers and suppliers. Furthermore, the Commission must acknowledge that the implementation of closed captioning will not take place in a vacuum as the transition to digital television ["DTV"] will impact further development and use of closed captioning technology. To

² Pub. L. No. 104-104, 110 Stat. 56 (1996). Section 713 to the Communications Act, 47 U.S.C. § 613.

³ Notice para. 1.

⁴ Closed Captioning and Video Description of Video Programming, Notice of Inquiry, MM Docket No. 95-176, 11 FCC Rcd 4912 (1996).

⁵ Notice para. 1.

ease this impact, the Commission should adopt a ten-year transition period for full implementation of closed captioning.

Common sense also must dictate what classes of programming should be exempt from closed captioning requirements. PCC fails to see the logic in imposing closed captioning requirements on infomercial and home shopping programs. These types of programs already convey all principal information graphically ensuring that viewers with hearing disabilities have access to the program. Indeed, to add closed captioning would merely interfere with the picture or convey unessential information. All foreign language programs, both Latin-based and non-Latin-based, also should be exempted. Otherwise, local independent programming producers/suppliers will be required to scale back or eliminate production due to the increased costs necessary to provide closed captioning. Similarly, program producers/suppliers will be reluctant to conduct closed captioning themselves due to the costs and complexities of performing the translation and providing the service.

I. The Commission Should Not Place Closed Captioning Responsibilities on Television Stations.

PCC believes that television stations should not bear the full weight of closed captioning obligations. Television stations, and in particular independent television stations, would be significantly burdened by such responsibilities, yet they are the parties least able to effect a change in providing closed captioning within video programming.

Television stations are in the worst position to ensure video programs contain closed captioning. They are the last ones to receive the programming. They have it for the shortest amount of time, usually just days before it airs. Also, unless the program is produced by a station, the station has no connection or access to the production stage of a program where, as the Commission notes, closed captioning may be accomplished with the least cost and the greatest efficiency.⁶ Programming that arrives without closed captioning places the broadcaster in a difficult position. It must decide either not to air the program or to expend time and money to close caption the program. Neither of these options is cost-effective or ensures that a program is accessible to hearing-impaired viewers.

The closed captioning requirements proposed in the Notice would acutely burden independent television stations. Network-affiliated broadcast stations likely will receive programming that is already closed captioned because the national networks will have both the incentive and the financial resources to close caption their programming.⁷ In contrast, an independent television station enjoys no such luxury. Programming is obtained without the protective umbrella of a network and each station would be required to screen the programs individually to ensure conformity to regulations. In the event that programming does not contain closed captioning, such stations would then have the economic burden of close captioning the programming.

⁶ Id. para. 30.

⁷ Id. para. 13 (noting that the majority of programming on each of the commercial broadcast networks is already closed captioned).

In sum, video programming producers/suppliers are in the best position to ensure that the product they distribute contains closed captioning. Captioning is most efficiently done at the production level,⁸ and is an important step in the creative process of originating programming. Therefore, closed captioning should also be done by the party who has the greatest creative stake in the production. Program producers/suppliers are in the best position to understand and describe those elements of the production that require communicating. Captioning should not be the responsibility of a party who does not have the resources to provide closed captioning, is far removed from program production, and who may interject an independent interpretation into the video work.

II. The Commission Should Adopt a Ten-Year Transition Schedule.

PCC is concerned that implementation of closed captioning requirements in conjunction with the transition to DTV will create substantial confusion and costs on all parties involved. Therefore, should the Commission decide to impose closed captioning requirements on television stations, it should adopt a ten-year transition schedule.

The transition to DTV will dramatically affect both the delivery of and viewers' ability to receive over-the-air television programming. Broadcasters will be installing new technology to deliver a DTV signal. Viewers will be purchasing new television receivers to enjoy this technology. The addition of swapping NTSC closed captioning equipment for DTV-compatible equipment may exacerbate technological problems for broadcasters and viewers alike. Clearly, imposing a short time frame for the implementation of closed captioning would aggravate these

⁸ H.R. Report 104-204, 104th Cong., 1st Sess. (1995) at 114.

problems. A ten-year transition period, on the other hand, will allow broadcasters to make the transition to closed captioning in a manner that minimizes disruption and maximizes efficiency. A gradual roll out of the closed captioning requirements will allow for a smooth transition as well as the opportunity to create further confidence in both DTV technology and closed captioning equipment.

A longer transition would also ease the financial burden of implementing this change. Under the Notice, broadcasters would be required to acquire equipment and expertise to close caption programs transmitted over NTSC facilities and then to modify or perhaps replace that equipment with digitally compatible equipment once DTV is implemented. Ten years will allow broadcasters to amortize these investments over a longer period and lessen the threat to the station's financial operations.

Ten years also allows the captioning market ample time to develop so that television stations and program producers/suppliers are not forced to pay exorbitant prices for captioning services. Commentators disagree on the number of actual competitors in the captioning services market.⁹ The market may have dozens of suppliers or there may be as few as three.¹⁰ A short closed captioning transition period will increase the demand on these services and allow them to increase their prices. However, a longer transition period may increase the chances that new entrants will develop which, in turn, will increase competition and reduce rates for closed captioning services.

⁹ Notice para. 23.

¹⁰ Id.

In short, PCC considers a ten-year closed captioning transition period essential for the public's acceptance of DTV. This proposed time frame would permit consumers and program providers to embrace and implement each technology efficiently and without unnecessary expense. It would also permit expansion and development of closed captioning services such that a greater amount of programing could be closed captioned at a lower cost.

III. Infomercials and Home Shopping Programming Should Be Exempt From Closed Captioning Requirements.

PCC urges the Commission to exempt infomercial and similar home shopping type programs from its closed captioning requirements. With respect to both types of programming, closed captioning would be economically burdensome to program producers/suppliers and television stations because closed captioning is unnecessary and will interfere with information that is already displayed graphically for viewers.

Infomercials and home shopping programs are used by consumer product manufacturers to advertise a particular product or service in a long-form format. Infomercials differ from home shopping programs in that they are approximately one-half hour in length and center on the advertisement of one particular product in an entertainment format usually including a host or hosts. Home shopping programs on the other hand are hosted by several individuals who advertise and promote a series of products sold by a variety of manufacturers during the program.

Closed captioning is unnecessary for infomercial and home shopping programs because all necessary information concerning the product is available graphically on-screen. On-screen textual information typically includes the product's price, size, order number, colors, and the

telephone number and address for ordering the product. Product descriptions are also textually depicted on screen and viewers are presented with either a picture of the product or a demonstration of a product. Thus, all principal information concerning the merchandise is displayed textually or visually on the screen. In its Notice the Commission recognized that where the "principal information" is presented in textual form, such as in interstitial and promotional advertisements, exemption from the closed captioning requirements is entirely appropriate.¹¹ The same rationale supports the exemption of infomercials and home shopping programs. Although the hosts of infomercials and home shopping programs discuss products and in some instances, take calls from viewers, these remarks and interjections by dial-in callers add little if any facts to the information concerning the product. Much of the dialogue restates or emphasizes information already present on the screen, and the remainder of the dialogue primarily consists of banter that is irrelevant to the advertisement of the item. It is therefore unnecessary to close caption remarks of infomercial and home shopping program hosts.

Finally, closed captioning should not be mandated for infomercials and home shopping programming because the closed captioned text would obscure important on-screen textual information about the product advertised. Viewers with closed captioning would not be able to see information essential to enjoying and participating in this type of programming.

¹¹ Id. para. 79 (discussing the exemption of interstitial and promotional advertisements).

IV. All Foreign Language Programming Should be Exempt From Closed Captioning Requirements.

PCC supports the Commission's proposal not to mandate closed captioning of non-Latin-based languages.¹² However, PCC urges the Commission to extend this exemption to all foreign language programming.

A closed captioning requirement for foreign language programming is likely to have a dramatic impact on the production and availability of such programs. Foreign language programming frequently is produced by local community groups. These producers/suppliers have limited resources and capital but deliver important programming that serves the local public interest. To impose a closed captioning requirement on these producers/suppliers may increase production costs such that these local programs will go either unproduced or scaled back. Without the closed captioning requirement, local foreign language programming producers/suppliers will continue to prosper and deliver programming that caters to a foreign language audience.

If the Commission adopts a rule requiring foreign language programs to be closed captioned, the responsibility for captioning must lie with the program producers/suppliers rather than television stations. Otherwise, television stations suddenly would find themselves in the foreign language transcription business, clearly an area in which they have no experience or resources. Television stations would need to hire highly skilled foreign language captioners and invest in specialized equipment. The cost of providing such a service would be considerable and certainly well beyond many television stations' financial resources. Moreover, television stations

¹² Id. para. 72.

will be unable to verify the accuracy of the captions. They have only the faith in the captioner's competency to assure them that what is transcribed is true to the program. The television station, in essence, would be abdicating control over the content of the captioning.

Imposing a closed captioning requirement for foreign language programming would have an adverse impact on the availability and diversity of such programs. Any minimal benefit that may be achieved by close captioning foreign language programming is clearly outweighed by the importance of ensuring continued development and over-the-air broadcast of such programs without economic or other undue burden.

Conclusion

PCC respectfully urges the Commission to modify its proposals for implementing closed captioning requirements. The burden of complying with closed captioning must fall on the program producer/supplier and not television stations, as the program producer/supplier is in the most cost-efficient position to provide close captioning. Should the Commission require television stations to provide closed captioning, the implementation schedule must be at least ten years. This time period is essential to ensure a smooth transition that complements the implementation of DTV.

Infomercial, home shopping and all foreign language programming should be exempt from the closed captioning requirements. Any benefits that may be achieved by closed captioning such programs would be minimal when compared to the economic burdens of and difficulties involved in close captioning such programming

Respectfully submitted,

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